IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6111 of 1991

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

==========

INDRAJITSING P GEEL - Petitioner(s)
Versus
COMPETENT AUTHORITY & DEPUTY COLLECTOR & 1 - Respondent(s)

==========

Appearance :
MR DF AMIN for Petitioner(s) : 1,
MRS REETA CHANDARANA, AGP for Respondents

==========

CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 25/08/2006

ORAL JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the writ petitioner challenges the order dated 28th September, 1990

passed by the Urban Land Tribunal and Ex-Officio, Additional Chief Secretary to the Government in Appeal No.Ahmedabad-557 of 1988 as well as the order dated 19th November, 1998 passed by the Competent Authority and Deputy Collector, Urban Land Ceiling, Ahmedabad in Case No.ULC/U-1/Ba-Fi/202.

2. The writ petitioner had submitted Form No.1 under the provisions of sub-section (1) of section 6 of the Urban Lands (Ceiling and Regulation) Act, 1976 (“the Act”) before the Competent Authority on 15th September, 1976 declaring the following lands to be part of his holding:

(1) Land admeasuring 2428 sq. mts. of survey No.96/2 of village Bagefirdose and;

(2) Land admeasuring 5969 sq. mts. of survey No.102/1/2 of village Bagefirdose.

3. The competent authority processed the aforesaid Form No.1 submitted by the petitioner. After affording an opportunity of hearing to the petitioner and considering the evidence and the record of the case, the competent authority passed the impugned order dated 29th September, 1988 holding that the lands of Survey No.102/1/2

of village Bagefirdose were not of the ownership of the petitioner and as such could not be considered to be part of his holding. It was further held that the petitioner's holding comprised of 2428 sq. mts. of land of survey No.96/2 of village Bagefirdose out of which he was entitled to retain 1000 sq. mts. and accordingly the remaining 1428 sq. mts. of land was declared as excess vacant.

4. The petitioner carried the matter in appeal under the provisions of section 33 of the Act before the Urban Lands Tribunal who by the impugned order dated 28th September, 1990 negatived the contentions raised on behalf of the petitioner and dismissed the appeal. Hence, the present petition.

5. Earlier by a judgement and order dated 21st July, 2000 the present petition had been disposed of as having abated. The operative part of the said order reads as under:

> *"12. As a result of the aforesaid discussion, this special civil application abates and the same is dismissed. However, it is made clear that the petitioner has been divested of whatever his right, title and interest in the land and that this land now is in possession of the tenants and they are entitled to retain this land and the relationship of landlord and tenants if any ceases to be there between the petitioner and tenants with effect from the date of order and as*

this land vests with the State Government, the petitioner is not entitled for any rent whatsoever to be recovered from the tenants. It is a land now as a gift to the tenants by the State Government as the State Government has not taken action of taking possession from the tenants in time. Rule stands discharged accordingly with no order as to costs."

6. The aforesaid order passed by the learned Single Judge was challenged by both the petitioner, as well as by the State Government, by way of Letters Patent Appeal No.38 of 2002 and 702 of 2003, respectively. By a common judgment and order dated 17th March, 2005, the Division Bench held that the learned Single Judge has committed a serious jurisdictional error by declaring the tenants of the appellant as the permanent occupiers of the land and conferring upon them the right to enjoy the land for ever. It was further held that in the writ petition filed by the appellant against the orders passed by the Competent Authority and the Tribunal, the learned Single Judge could not have created new relationship between the tenants and the State Government ignoring the fact that the appellant was the owner of the disputed land. The Division Bench was further of the view that the learned Single Judge could not have declared the proceedings initiated under the Act as having abated without properly deciding the issue as to whether physical possession of the land had been taken over by the Competent Authority before

coming into force of the Repeal Act. The Appeal was accordingly allowed and order dated 21st July, 2000 was set aside with the direction that Special Civil Application No.6111 of 1991 be decided afresh. It is in these circumstances that the matter has come up for hearing before this Court.

7. It appears that earlier, at some stage in these proceedings, the learned Counsel for the petitioner had submitted before this Court that certain record which was produced in Letters Patent Appeal No.38 of 2002 by both the sides, may be relevant for deciding the petition. In the circumstances, this Court had by an order dated 20th June, 2006 directed that the record of the Letters Patent Appeal No.38 of 2002 be placed with this writ petition. Pursuant to the aforesaid directions, the registry has put up a note dated 30th June, 2006 submitting that, “the matter in question is not received from the decree department (L.P.A.) till today i.e. 30.6.2006. However, connected Letters Patent Appeal No.702 of 2003 is received from the L.P.A. Department and is tagged herewith.” Accordingly, the record of Letters Patent Appeal No.702 of 2003 has been taken into consideration while deciding the writ petition.

8. Heard Mr. D.F. Amin, learned Advocate for the petitioner and Mrs. Reeta Chandarana, learned

Assistant Government Pleader for the respondents.

9. Mr. Amin, learned Advocate for the petitioner submitted that the respondent authorities have failed to prove that the possession of the lands declared excess vacant vide order dated 29th September, 1988 have been taken over on behalf of the State Government in accordance with law. Hence, in view of the provisions of section 3 and 4 of the Urban Lands (Ceiling and Regulation) Repeal Act, 1999 (the Repeal Act) the present proceedings shall abate. Accordingly, the petition is required to be disposed of as having abated.

10. It was submitted that it is the case of the respondent State authorities that possession of the subject lands has been taken over on 22nd January, 1992 as reflected in panchnama of even date produced by the respondents. It was submitted that the alleged possession vide panchnama dated 22nd January 1992 was not only merely a paper possession but was not in accordance with the provisions of the Act and as such was not valid in the eyes of law.

11. Drawing the attention of the Court to the panchnama dated 22nd January, 1992, the following infirmities were pointed out:

(i) The panchnama does not bear the

signature of the Maintenance Surveyor in whose presence the panchnama was allegedly drawn;

(ii) The address of the witnesses are not properly stated, in that, address of the first witness is shown to be Vishala and that of the second witness is shown to be Isanpur. It was submitted on the basis of the aforesaid addresses it would not be possible to locate or identify the said witnesses which goes to show that in all probabilities the panchnama has not been prepared at the site;

(iii) The prescribed format of the Panchnama contain four columns bearing details regarding the nature of the lands as to whether the same has constructions thereon or is vacant. The details of the said four columns as translated in English read as under:

(1) As described above the site of the lands being vacant, possession of the same is taken over without any encumbrance;

(2) As described above there being unauthorized constructions at site, the same is with superstructure. Accordingly, possession is taken over

on exparte basis without any encumbrance;

(3) There being unauthorized constructions at site, it is not possible to take over the possession;

(4) Others.

Against the aforesaid four categories, there is a tick mark against the first category, namely that the lands being vacant, possession is taken over without any encumbrance.

It was pointed out that it is an admitted position that there did exist constructions on the subject lands prior to the coming into force of the Act; however, the same is not reflected in the panchnama. It was submitted that the panchnama being totally silent as regards the superstructures thereon, gives rise to the suspicion that the same was not prepared at the site.

12. It was vehemently argued that the respondents had failed to follow the procedure laid down under the Act prior to taking over possession of the subject lands. It was submitted that though it is the case of the respondents that the petitioner had been served with notice under sub-section (5) of Section 10 of the Act, in fact no such notice was ever served upon the

petitioner. Moreover, tenants undisputedly occupy part of the subject lands, however, though such tenants are interested persons as envisaged under the Act, no notice was even issued to them. It was submitted that the non-compliance of the provisions of section 10(5) of the Act would vitiate the entire proceedings taken after the said stage and as such the alleged possession vide panchnama dated 22nd January, 1992 being contrary to the provisions of the Act cannot be sustained. It was submitted that ample opportunities had been granted to the respondents during the course of the proceedings before this Court, however, the respondents have not been able to produce proof of service of notice under section 10(5) of the Act nor have they been able to establish beyond doubt that possession of the subject lands has been taken over, as alleged.

13. Referring to the notice dated 26th July, 1991 issued under the provisions of section 10(5) of the Act (Annexure-IV to the Letters Patent Appeal) the learned Advocate drew attention of the Court to the endorsement made at the bottom of the said notice whereby the Maintenance Surveyor, Unit-1 has been directed to inspect the site and prepare a detailed map and to mark the extent of any existing construction thereon, the area covered by such construction and the vacant land; to submit that no such exercise, as directed, appears to have been carried out by

the Maintenance Surveyor as no such map has been placed on record by the respondents.

14. In conclusion, it was submitted that before the coming into force of the Repeal Act, possession of the subject lands has not been taken over on behalf of the Government as contemplated under the Act and as such the provisions of section 4 of the Repeal Act would come into play and the proceedings would abate.

15. The learned Assistant Government Pleader vehemently opposed the petition. It was submitted that procedure as prescribed under the Act has been duly followed and the same has culminated into the possession of the subject lands being taken over on behalf of the State Government under the provisions of section 10(6) of the Act. It was pointed out that the Competent Authority had filed an affidavit dated 26th October, 1999, in response to the petition to point out the position as regards possession of the subject lands wherein it has been stated that notice under section 10(5) of the Act had been issued on 26.7.1991 and that the same had been duly served upon the petitioner. It was submitted that the possession of the subject lands had been duly taken over as recorded in the aforesaid panchnama on 22nd January, 1992, in the presence of panchas. Referring to the map annexed to the panchnama, it was submitted

that the said map had been signed by the Maintenance Surveyor, hence the absence of his signature in the panchnama is a mere technical defect and would not vitiate the panchnama. It was submitted that once possession has been duly taken over in accordance with procedure provided under the Act, there was no question of abatement of legal proceedings as envisaged under section 4 of the Repeal Act.

16. Before proceeding with the merits of the case, it would be necessary to refer to the provisions of section 3 and 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, which read as under:

> *"**Section 3. Savings**-*
>
> *(1) The repeal of the principal Act shall not affect -*
>
> *(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;*
>
> *(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment or any Court to the contrary;*
>
> *(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.*

(2) Where -

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land,

then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

***Section 4. Abatement of legal proceedings** -*

All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate:

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

17. Thus, by virtue of the provisions of section 3 of the Repeal Act, if possession of vacant lands has been taken over on behalf of the State Government before the coming into force of the Repeal Act, the repeal of the Principal Act would not affect the vesting of such lands under sub-section (3) of section 10 of Act. Hence, the issue as to whether possession of lands declared

excess vacant under the Act has been taken over assumes great significance after the coming into force of the Repeal Act, inasmuch as if possession has not been taken over, the proceedings would abate under section 4 of the Repeal Act and the ownership of the land, if vested in the State Government under section 10(3) of the Act, would be required to be restored to the original land-holder subject to repayment of any amount that has been paid by the State Government with respect to such land.

18. Normally, this Court while exercising writ jurisdiction under Article 227 of the Constitution of India would not enter into the arena of disputed questions of fact. However, in view of the provisions of the Repeal Act, before proceeding to adjudicate the matter on merits it would be necessary to ascertain as to whether after the coming into force of the Repeal Act, the proceeding before the Court survives or has abated. It is in this context that the issue as to whether possession has been taken over or not is required to be gone into. Earlier, the learned Single Judge had disposed of the present petition on the ground that the same has abated, but the said order had been set aside by the Division Bench which held that the learned Single Judge could not have declared the proceedings initiated under the Act as having abated without properly deciding the issue as to whether physical possession of the land has been

taken over by the competent authority before coming into force of the Repeal Act. In these circumstances, it becomes necessary for the Court to first examine the issue as to whether possession of the lands declared to be excess vacant has been taken over as envisaged under the provisions of the Act.

19. Insofar as the issue as regards the abatement of the present proceeding is concerned, it is the case of the respondents that the procedure prescribed under the Act has been duly followed, viz., notice under sub-section (5) of section 10 has been issued on 26th July, 1991 and the same has duly been served upon the petitioner and after expiry of the notice period, possession of the subject lands has been duly taken over in the presence of panchas on 22nd January, 1992, as evidenced by the panchnama of even date. Hence, the possession of the subject lands having been taken over prior to the coming into force of the Repeal Act, the proceedings would not abate. On the other hand, it is the case of the petitioner that the petitioner has not been served with the notice under section 10(5) of the Act and that the alleged taking over of possession of the subject lands, vide panchnama dated 22nd January 1992, is merely a paper possession which cannot be sustained in view of the infirmities narrated hereinabove.

20. Sub-sections (5) and (6) of section 10 of the

Act which are relevant for the purpose of the present petition read as under:

> ***"10. Acquisition of vacant land in excess of ceiling limit.-***
>
> *(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of notice.*
>
> *(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary."*

21. On a plain reading of the aforesaid provisions, it is apparent that the statute contemplates giving an opportunity to the landholder or any person in possession of excess vacant land to surrender or deliver possession thereof to the State Government and for this purpose provides for giving notice in writing, ordering such person to surrender or deliver possession of such lands. It is only when pursuant to such notice, such person refuses or fails to comply with an order under sub-section (5) within a period of thirty days of the service of notice, that the competent authority is required to take over possession of the vacant land and for that

purpose may use force, if necessary. Therefore, the provisions of sub-section (6) are to be resorted to only when there is refusal or non-compliance of an order under sub-section (5) of section 10 of the Act within the prescribed period.

22. As can be seen from the facts noted above, though it is the case of the respondents that the petitioner has been duly served with notice under section 10(5) of the Act, no supporting document has been produced to show that service of notice has been duly effected. For the purpose of verifying the correctness of the aforesaid averments made by the competent authority, the learned Assistant Government Pleader had been directed to call for the record of the case from the competent authority. Upon perusal of the record, it is apparent that though at every stage of the proceeding notices issued to the petitioner have been served by Registered Post Acknowledgment Due and the Acknowledgment receipts thereof are also found on record. But, insofar as notice under section 10(5) of the Act is concerned no such receipt is found on record. Hence, in absence of proof of service of notice, it cannot be said that the requirements of section 10(5) of the Act have been complied with.

23. In the State of *Maharashtra v. B.E. Billimoria*, (2003) 7 SCC 336, the Apex Court has in the

context of the Urban Lands (Ceiling and Regulation) Act, 1976 held that the said Act being an expropriatory legislation is required to be construed strictly.

24. The Apex Court has in the case of *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111, in the context of the Gujarat Town Planning and Urban Development Act, 1976 held thus *"The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof."*

25. Thus, applying the principle of strict construction with the dictum of the aforesaid decision, the authorities are required to act strictly in accordance with the statutory provisions. Thus, when sub-section (5) of section 10 mandates giving notice of an order under the said sub-section to the person in possession, the same is required to be complied with in true letter and spirit. Considering the nature of rights involved, mere issuance of notice without service thereof, cannot be said to be due compliance with the provisions of the statute. Besides, the provisions of sub-section

(6) of section 10 can be resorted to only if the person fails to comply with an order under sub-section (5) thereof, within a period of thirty days of service of notice. Hence, possession cannot be taken over under section 10(6) of the Act, unless a period thirty days from the date of service of notice has elapsed. In absence of service of notice under sub-section (5) of section 10, there will be no starting point for calculating the period of thirty days. In other words time will not start running, hence the question of taking over possession under sub-section (6) of section 10 of the Act, will not arise at all. In this view of the matter, it was not open to the respondent authorities to resort to the provisions of sub-section (6) of section 10 of the Act without first complying with the provisions of sub-section (5) thereof. Hence, such action being in contravention of the statutory provisions cannot be sustained and deserves to be struck down.

26. As regards the veracity of the panchnama dated 22nd January, 1992, from the facts noted above, it is apparent that the same does not inspire much confidence. The said panchnama is beset with innumerable infirmities as rightly pointed out by the learned Advocate for the petitioner. Not only does the panchnama not bear the signature of the officer who was authorised by the competent authority to take over possession of the subject lands, the same does not even

reflect the actual position of the subject lands. From the overwhelming evidence on record, it is apparent that the subject lands have existing constructions thereon, despite which there is nary a whisper as regards the same in the said panchnama. Apart from the fact that there is no reference to any existing construction in the panchnama, even the marking against specific columns providing for different contingencies do not reflect the correct position. Besides, in absence of complete and correct addresses of the witnesses to the panchnama, it is difficult to comprehend as to how they would be located if the said panchnama is required to be proved before a Court of law. Though the statute does not provide any specific format of panchnama or the manner in which possession of excess vacant lands is to be taken over, but at the same time there has to be some semblance of proper procedure having been followed, which is miserably lacking in the present case.

27. Another aspect which is required to be noted is that as a matter of practice, the concerned officer who has been authorized by the competent authority to take over the possession of any land on behalf of the State Government, upon taking over possession of such land makes a report regarding taking over of possession of such land to the competent authority. However, upon perusal of the record of the case, no such

report appears to have been made in the present case.

28. From the facts noted above it is apparent that insofar as the proceedings after the stage of section 10(3) of the Act are concerned, the same appear to have been carried out in the most casual and perfunctionary manner. Where valuable rights of citizens are concerned the authorities under the Act are required to strictly comply with the provisions of law and any deviation therefrom cannot be countenanced. In the circumstances, it cannot be said that the respondent authorities have taken over the possession of the subject lands, in accordance with law. As possession of the subject lands cannot be said to have been taken over lawfully, the alleged possession vide panchnama dated 22nd January, 1992 can be said to be *non est* and as such the provisions of section 4 of the said Act would be attracted and the proceedings would abate.

29. For the foregoing reasons, it is held that possession of the subject lands has not been taken over on behalf of the State Government in accordance with the provisions of the Act. The panchnama dated 22nd January 1992 suffers from incurable infirmities and therefore, it cannot be considered to be proof of possession having been taken over and as such cannot be sustained. The same is, accordingly, quashed and set aside.

30. In view of the findings recorded above, the respondent State authorities have not been able to establish that possession of the subject lands has been taken over on behalf of the State Government prior to the coming into force of the Repeal Act. Under these circumstances, having regard to the provisions of section 4 of the Repeal Act, the proceedings under the Act abate. Nothing more is required to be done in this case. In this view of the matter, the impugned orders will not have any effect and shall not remain in operation.

31. The petition is, accordingly, disposed of. The parties shall bear their own costs.

[HARSHA DEVANI, J.]

(ila)/parmar*